

REMARKS**A. Status of the Claims**

Prior to the submission of this paper, claims 24-28, 30, 31, 33, 35, 105, 107-109, 115-117, and 122-124 were pending and under examination. In this response, Applicants have cancelled these claims and have introduced new claims 126-164.

Claims 24-27, 30, 31, 33, 35, 105, 107-109, 115-117, and 122-124 are rejected under 35 U.S.C. § 112 ¶ 1, for allegedly failing to comply with the written description requirement.

Claims 24-27, 30, 31, 33, 35, 105, 107-109, 115-117, and 122-124 are rejected under 35 U.S.C. § 112 ¶ 1, for allegedly failing to “reasonably provide enablement for the administration of the claimed zinc composition for increasing elastin content in the skin of a subject to prevent wrinkles.”

B. Explanation of the Amendments

As noted above, claims 24-28, 30, 31, 33, 35, 105, 107-109, 115-117, and 122-124 have been cancelled, and new claims 126-164 have been introduced. Support for new claims 126-164 is generally found throughout the specification.

Support for claim 126 is found in at least ¶¶[17], [18], [21], [29], [37]-[39], Example 1, and Figures 1, 7-12. In particular, support for “[a] method of increasing elastin content in a region of skin...comprising applying topically a composition consisting essentially of one or more zinc containing components” is found, for example, in ¶¶[17] and [18]. Support for the zinc-containing components recited in claim 126 is found, for example, in ¶[29]. Support for the language “wherein zinc is present in the composition at a concentration that increases elastin

without causing epidermal sloughing and irritation due to zinc” is found, for example, in the caption to Figure 1D, which reads as follows:

[a]s dose of Zn increases from zero (A) to low(B) to medium (C) to high (D) the length, density, and thickness of black elastic fibers increases significantly. At high dose, epidermal sloughing and irritation occurs, however. Lower doses afford the benefits without local signs of irritation. Overall, ionic zinc affords dose-dependent increases in elastin content of skin after topical administration.

Support for the phrase “wherein the elastin content in the region of skin is increased in a sufficient amount to treat wrinkles” is found, for example, in ¶¶[37]-[39].

Support for claim 127 is found, for example, in ¶[29].

Support for claim 128 is found, for example, in ¶[29].

Support for claim 129 is found, for example, in ¶[39].

Support for claim 130 is found, for example, in ¶[39].

Support for claim 131 is found, for example, in ¶[39].

Support for claim 132 is found, for example, in ¶[49] of Example 1.

Support for claim 133 is found, for example, in ¶[49] of Example 1.

Support for claim 134 is found, for example, in ¶[49] of Example 1.

Support for claim 135 is found, for example, in ¶[37].

Support for claim 136 is found, for example, in ¶[38].

Support for claim 137 is found, for example, in ¶[29].

Support for claim 138 is found, for example, in ¶[33].

Support for claim 139 is found, for example, is found in at least ¶¶[17], [18], [21], [29], [37]-[39], Example 1, and Figures 1, 7-12. In particular, support for “[a] method of increasing elastin content in a region of skin...comprising applying topically a composition comprising one or more zinc containing components” is found, for example, in ¶¶[17], [18], and [21]. Support for the zinc-containing components recited in claim 139 is found, for example, in ¶[29]. Support for the language “wherein zinc is present in the composition at a concentration that increases elastin without causing epidermal sloughing and irritation due to zinc” is found, for example, in the caption to Figure 1D, as noted above. Support for the phrase “wherein the elastin content in the region of skin is increased in a sufficient amount to treat wrinkles” is found, for example, in ¶¶[37]-[39].

Support for claim 140 is found, for example, in ¶[29].

Support for claim 141 is found, for example, in ¶[29].

Support for claim 142 is found, for example, in ¶[39].

Support for claim 143 is found, for example, in ¶[39].

Support for claim 144 is found, for example, in ¶[39].

Support for claim 145 is found, for example, in ¶[49] of Example 1.

Support for claim 146 is found, for example, in ¶[49] of Example 1.

Support for claim 147 is found, for example, in ¶[49] of Example 1.

Support for claim 148 is found, for example, in ¶[37].

Support for claim 149 is found, for example, in ¶[38].

Support for claim 150 is found, for example, in ¶[29].

Support for claim 151 is found, for example, in ¶[21].

Support for claim 152 is found, for example, is found in at least ¶¶[17], [18], [21], [29], [37]-[39], Example 1, and Figures 1, 7-12. In particular, support for “[a] method of increasing elastin content in a region of skin...comprising applying topically a composition comprising one or more zinc containing components” is found, for example, in ¶¶[17], [18], and [21]. Support for the zinc-containing components recited in claim 152 is found, for example, in ¶[29]. Support for the language “wherein zinc is present in the composition at a concentration that increases elastin without causing epidermal sloughing and irritation due to zinc” is found, for example, in the caption to Figure 1D, as noted above. Support for the phrase “wherein the elastin content in the region of skin is increased in a sufficient amount to treat wrinkles” is found, for example, in ¶¶[37]-[39].

Support for claim 153 is found, for example, in ¶[29].

Support for claim 154 is found, for example, in ¶[29].

Support for claim 155 is found, for example, in ¶[39].

Support for claim 156 is found, for example, in ¶[39].

Support for claim 157 is found, for example, in ¶[39].

Support for claim 158 is found, for example, in ¶[49] of Example 1.

Support for claim 159 is found, for example, in ¶[49] of Example 1.

Support for claim 160 is found, for example, in ¶[49] of Example 1.

Support for claim 161 is found, for example, in ¶[37].

Support for claim 162 is found, for example, in ¶[38].

Support for claim 163 is found, for example, in ¶[29].

Support for claim 164 is found, for example, in ¶[21].

C. Rejection under 35 U.S.C. §112, ¶1 (Written Description)

In view of the cancellation of claims 24-28, 30, 31, 33, 35, 105, 107-109, 115-117, and 122-124, Applicants respectfully assert that the Office Action's rejection of these claims under 35 U.S.C. §112 is moot. Accordingly, Applicants respectfully request reconsideration and withdrawal of this ground of rejection.

D. Rejection under 35 U.S.C. §112, ¶1 (Enablement)

In view of the cancellation of claims 24-28, 30, 31, 33, 35, 105, 107-109, 115-117, and 122-124, Applicants respectfully assert that the Office Action's enablement rejection is moot. Accordingly, Applicants respectfully request reconsideration and withdrawal of this ground of rejection.

E. Applicants Claims' Are Patentable Over The Previously Cited References

1. Applicants' Claims Are Patentable Over U.S. Patent No. 6,573,299

In this section, Applicants take the opportunity to discuss the patentability of the new claims U.S. Patent No. 6,573,299 to Petrus ("Petrus"). Petrus had been relied upon in prior Office Actions as the primary reference to support claim rejections under 35 U.S.C. §103(a), and thus Applicants wish to discuss Petrus to the extent that the Examiner contemplates a new obviousness rejection based on Petrus, in combination with other references.

Petrus fails to teach or suggest or suggest all of the features in the presently pending claims. For instance, Petrus fails to teach or suggest "[a] method of increasing elastin content," especially one that comprises "topically applying a composition" wherein "zinc is present in the

composition at a concentration that increases elastin without causing epidermal sloughing and irritation due to zinc” (see, e.g., claim 126).¹ In fact, Petrus does not even recognize that zinc could increase elastin or cause epidermal sloughing and irritation, and instead merely reports that “[z]inc compounds have anti-inflammatory and anti-infective properties.” Petrus, 12:10-11. Moreover, as Applicants previously noted, Petrus’s formulations include several anti-inflammatory compounds, such as, for example, N-acetylcysteine (Petrus, 9:37-10:7); alpha-lipoic acid (Petrus, 10:64-11:22), methyl-sulfonyl-methane (Petrus, 11:54-12:7), which would likely mask any epidermal sloughing and irritation caused by Petrus’s zinc compounds.

As Petrus fails to even recognize that zinc can cause irritation and sloughing, Petrus cannot (and does not) teach or suggest a method involving “topically applying a composition” wherein “zinc is present in the composition at a concentration that increases elastin without causing epidermal sloughing and irritation due to zinc.” For at least this reason, Applicants respectfully submit that new claims 126-164 are patentable over Petrus.

2. Applicants’ Product Continues to Win Industry Accolades

For four consecutive years, Applicants’ commercial product, Relastin Eye Silk, has won Allure Magazine’s Editor’s Choice “Best of Beauty” Award in the category of “Antiwrinkle Eye Creams”. Applicants’ previous papers reported that Relastin Eye Silk was named the best “Antiwrinkle Eye Cream” of 2007 and 2008. Here, Applicants report that Relastin Eye Silk has been named best “Antiwrinkle Eye Cream” of 2009 and 2010 as well[see attached articles].

¹ Similar arguments apply to new independent claims 139 and 152.

Allure Magazine [Allure Magazine, October 2010 issue, p. 230] reports that “[d]ermatologists hail Relastin Eye Silk as **the best elastin booster**” (emphasis added) by testing thousands of beauty products to find their 232 “best of beauty” products. The Allure Magazine issue from October 2009 issue, p. 208 also praises Relastin Eye Silk, after testing thousands of beauty products to find their 189 greatest beauty products. Thus, these awards are based on the performance of the product, rather than a clever marketing campaign or volume of gross sales. Allure Magazine also states that “Relastin Eye Silk is *amazing at building elastin*” [Allure Magazine, October 2008 issue, p. 288 (emphasis added)].

The performance of Relastin Eye Silk can be directly attributed to the benefits obtained by practicing the presently claimed invention. In view of the foregoing, there is a direct nexus between the industry accolades garnered by Relastin Eye Silk and the presently claimed invention. The accolades are based on product performance which can be directly traced back to practicing the claimed methods of increasing elastin by topical application of compositions containing zinc. Accordingly, these four consecutive awards by Allure magazine, which had tested several other anti-wrinkle creams, provide strong secondary indicia of non-obviousness.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. **50-3732**, Order No. 103720-105089US1. In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. **50-3732**, Order No. 103720-105089US1.

Respectfully submitted,
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